

SHIP ARREST IN SAUDI ARABIA

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1. Please give an overview of ship arrest practice in your country.

KSA laws and regulations do not regulate ship arrest in specific. Therefore, the general legal principles of precautionary attachment procedure stipulated for in the KSA Enforcement Regulations will apply to the arrest of ships in KSA. According to these Regulations, a creditor will have the right to attach the assets of his debtor if he succeeds in proving that he has a credible claim against the defendant and has a legitimate indication that the defendant might dissipate his assets. The arrest application is normally submitted to the Court of First Instance. The court will consider the application on a prima facie basis and the arrest order will be issued in chambers on an ex-parte basis.

2. Which International Convention applies to arrest of ships in your country?

KSA is neither a party to the International Convention on the Arrest of Seagoing Ships of 1952 nor to the International Convention on the International Convention on the Arrest of Ships of 1999.

3. Is there any other way to arrest a ship in your jurisdiction?

Ships may be arrested in KSA in reliance to the Enforcement Regulations which contain general provisions in relation to conservatory attachment of assets (please see above question no. 1).

4. Are there alternatives e.g. saisie conservatoire or freezing order?

No. The saisie conservatoire procedure will apply to the arrest of ships in KSA.

5. For which types of claims can you arrest a ship?

In general, a ship can be arrested for any claim which the claimant has against the owner of the ship or the ship, provided the claim is proven, on the face of things, to be serious and grounded.

6. Can you arrest a ship irrespective of her flag?

Yes. A ship anchored within the territorial waters of KSA can be arrested irrespective of the flag she is flying.

7. Can you arrest a ship irrespective of the debtor?

In general, a ship can be arrested for any claim which the claimant has against her current owner provided that the claim is proven, on the face of things, to be serious and grounded. However, in certain circumstances especially where the claim is secured by a maritime lien, it could be argued in court that the creditor has a recourse against the ship regardless of the owner's identity.

8. What is the position as regards sister ships and ships in associated ownership?

According to KSA regulations, there is no legal provision which gives the creditor the right to arrest a ship unless its owner is responsible for the maritime debt. The arrest of a sister ship might be possible (without being guaranteed) providing that they are both owned by the same party who is a debtor of the arresting party. The arrest of associated ships is not possible in KSA.

9. What is the position as regards Bareboat and Time-Chartered vessels?

The arrest of a ship for a charterer's might be possible if it is proved that the creditor has a maritime lien (see question no. 7).

10. Do your Courts require counter-security in order to arrest a ship?

Yes.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

In practice there is no difference between the arrest of a ship for any debt and the arrest of ship for a maritime lien.

12. Does your country recognise maritime liens? Under which International Convention, if any?

KSA did not accede to any of the International Conventions relating to Maritime Liens. The Commercial Court Regulations which regulates maritime transport in KSA and article 154 of the Regulations enumerates the following maritime lines:

- a) The costs of a court action and other costs involved in the sale of the ship and the distribution of the sale proceeds.
- b) The pilotage fees, tonnage dues and any other general charges made by ports, harbours and docks, also all compensation payable for damage caused to the technical installations of ports, harbours and docks.
- c) The costs of guarding and maintaining the security of the ship from the time that the ship enters port preceding its sale until such time as the sale is concluded.
- d) The cost of rental for the warehouse in which the tools and equipment of the ship are deposited.
- e) The maintenance costs of the ship and its machinery and other equipment during its last voyage and from the time it enters and moors in port.
- f) The wages of the master and crew who were employed on the vessel for its last voyage.
- g) Money borrowed by the master during the vessel's last voyage and the price of the goods sold out of the cargo for the vessel's necessities.
- h) The balance remaining as a debt to the vendor of the ship before it left for the voyage, also loans, and the wages of employees engaged on the construction of the ship, sums paid out for the necessities and repair of the ship before sailing, and , in general, all monetary amounts expended on the ship before departure.
- i) Maritime loans taken out on the vessel and its appurtenances before sailing for the purpose of provisioning the ship and purchasing necessary stress as well as preparing it for the voyage.
- j) The insurance premiums for the ship and its appurtenances during the last voyage.
- k) The ship's share in general average loss which includes compensation to be paid to the shippers as a result of the loss and damage of goods and items shipped, also the loss and damage of cargo on account of some default on the part of the master and crew.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

Assuming that all forwarded documents have been translated into Arabic by a sworn translator in KSA, the ship can be arrested within 48 to 72 hours.

14. Do you need to provide a POA or any other documents of the claim to the Court?

A POA duly notarised and legalised up to the KSA Embassy must be submitted to the competent Court of First Instance with the arrest application. In addition, we need to attach to the arrest application all the documentation supporting the claim against the ship. In this context it must be noted that the official language in KSA is Arabic which means that all documents in foreign language must be translated into Arabic by a sworn translator in KSA prior to submission.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

The arrest application must be submitted manually to the competent Court of First Instance as electronic filing is not available. The documentation supporting the claim must be attached to the application and if this documentation is in foreign language it must to be translated into Arabic language. Only official documents must be legalised up to the KSA Embassy at the place of issuance and then legalised by the Ministry of Foreign Affairs in KSA.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

No they will not.

17. What is the procedure to release a ship from arrest?

The release of the ship by the applicant is done by virtue of a simple memorandum submitted to the court in this regard. If the defendant to the application wants to release the ship, he must deposit the security determined by the judge and request him to issue an order in relation to the release of the ship. Both orders must be served upon the ship and the harbour master or the coast guard.

18. What type of security needs to be placed for the release?

The only type of security acceptable by the court is bank guarantee issued by a local bank.

19. Does security need to cover interest and costs?

The judge will determine the amount of the security that must be deposited by the defendant to the arrest application in order to release the ship. This issue is left to the discretion of the judge.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

P&I LOUs are unacceptable by KSA Courts.

21. How long does it take to release the ship?

The release of the ship can be done within 48 to 72 hours.

22. Is there a procedure to contest the arrest?

The defendant to the arrest application may file an appeal before the Court of Appeal. Upon hearing the appeal, the Court may make an order lifting the arrest order and such judgment shall be enforceable through the normal channels.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

The applicant must, within ten days starting from the issue of the arrest order, file substantive proceedings before the competent court to sustain the arrest order, failing which the arrest order will be void ab initio.

24. Do the Courts of your country acknowledge wrongful arrest?

Under the general principles of civil law, a claim for wrongful arrest may succeed if the party claiming indemnification can prove the bad faith of the arresting party and its losses arising from the arrest.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

This concept is not recognised in KSA.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

In principle, it is not possible unless we succeed in proving to the Court that the ship is under the risk of a quick deterioration and in a situation that endangers third parties.

In 2008 **Omar joined the Transport & Insurance department at Al Tamimi & Company and currently is the head of the department covering 9 countries.*

Ranked by both Legal 500 and Chambers and Partners, Omar's experience as a marine lawyer and advocate covers almost all aspects of the industry. He has dealt with and represented major P&I Clubs regarding claims. He has represented many clients in marine disputes through arbitration in London, Dubai, Kuwait and Jordan. He regularly advises in cargo, container, marine agency, shortages, groundings, bunker, collisions, salvage, seaworthiness and insurance claims. He has also advised on many vessel sale and purchases, which includes drafting, reviewing and advising on related legal and finance documents. He also has drafted and advised on different types of maritime documents such as recaps, charter parties, B/L, LOIs, Agency Agreements, Insurance and P&I cover. Omar's experience includes mergers and acquisitions advice and structuring and set up advice for marine companies and other entities in jurisdictions such as Cyprus, Egypt, Germany, Jordan, Malta, Panama, Sudan, UAE (including the free zones) and UK.

Omar is an author of the UAE Vessel Registration and Mortgage Section in the Kluwer International Maritime Law Handbook. He is currently heading the EMAC team to establish the first Maritime Arbitration Centre in the UAE and the region.